IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

JAMES ALLEN BISHOP,
Plaintiff

V. 1:93CV23-B-D

FRANKIE MCCOLLUM, ET AL.,
Defendants

MEMORANDUM OPINION

This cause comes before the court upon the motion of the defendants for summary judgment. The plaintiff has responded and, upon consideration of the parties submissions, the court is in a position to rule.

For purposes of deciding the present motion, the court briefly recites the following facts alleged in this action. On or about January 29, 1992, plaintiff James Allen Bishop was arrested after an altercation with another person in Okolona, Mississippi. Although the basis of the arrest is not identified, defendants Ivy and/or McCollum and Owens were the arresting officers.[1] Bishop was transferred to the city jail and, upon his arrival, allegedly beaten by Owens and McCollum and another defendant, Bobby Bean. It is not claimed that Chief Ivy participated in the beating. It appears undisputed that Bishop's injuries arising from whatever

[1]Bishop identifies McCollum and Owens as the arresting officers. The defendants contend that McCollum and Owens transported the plaintiff to the jail and that Ivy arrested the plaintiff.

source were severe and included the partial detachment of an earlobe.

Bishop was then placed in a cell in the Okolona city jail where it is asserted he repeatedly asked for medical treatment. Bishop remained incarcerated for approximately six hours before being transported to the hospital for treatment. The plaintiff filed suit under 42 U.S.C. § 1983 "to recover actual and punitive damages for unreasonable seizure of plaintiff's person, arbitrary infliction of punishment and for assault in violation of state law." Officers McCollum and Owens are sued in their official as well as in their individual capacities; defendant Bean is sued in his individual capacity only, while Chief Ivy is sued in his official capacity only.

The defendants seek summary adjudication as to the City of Okolona, and all § 1983 official capacity claims.[2] While the defendant claims the actions of the officers deprived him of his constitutional rights, no specific constitutional provision is mentioned in the complaint. By the facts therein stated, however, coupled with the language employed in the complaint, the court can surmise that the plaintiff seeks to vindicate federal rights

[2]The City also sought summary judgment on the plaintiff's state law claims. In response to the motion, the plaintiff agreed to "waive[] his state law claim of assault as to the City of Okolona." Absent any evidence or argument that the defendant is not entitled to summary judgment on this claim, the court will accordingly order the state law assault claim against the City dismissed with prejudice.

guaranteed by the Fourth and Eighth Amendments.[3] Defendant City of Okolona moves for summary judgment on all claims against it on the sole contention that the plaintiff cannot establish a policy upon which to base municipal liability. The plaintiff urges denial of the motion by contending that defendant Ivy is a policymaker for the City of Okolona with regard to the operation of the police department and the maintenance of the Okolona city jail. The plaintiff does not address the official capacity claims pled against McCollum and Owens, to which the defendants also seek dismissal.

Summary judgment, generally, is appropriate only if "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The entry of summary judgment is mandated by this rule, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an essential element to the case upon which that party bears the burden of proof. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

A municipality is liable under § 1983 when a plaintiff can demonstrate that the municipality itself, through implementation of

[3]And possibly the due process clause of the Fourteenth Amendment. See City of Revere v. Massachusetts General Hosp., 463 U.S. 239 (1983) (failure to provide medical attention to prisoner can rise to the level of a Fourteenth Amendment due process claim).

a policy or custom, causes a constitutional violation. Monell v. Department of Social Services, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). The City of Okolona cannot be held vicariously liable for the actions of its employees; rather, the plaintiff must demonstrate a policy or custom which he can link causally to the constitutional deprivation. Bennett v. City of Slidell, 728 F.2d 762 (5th Cir. 1984) (en banc), cert. denied, 472 U.S. 1016, 105 S. Ct. 3476, 87 L. Ed. 2d 612 (1985). Succinctly, "there must be (1) a policy (2) of the City's policymaker (3) that caused (4) the plaintiff to be subjected to a deprivation of a constitutional right." Grandstaff v. City of Borger, 767 F.2d 161, 169 (1985). While the defendants acknowledge that "municipal liability may be imposed for a single decision by municipal policymakers under appropriate circumstances," Pembaur v. Cincinnati, 475 U.S. 469, 106 S. Ct. 1292, 89 L. Ed. 2d 452, 463 (1986), they contend that the Chief of Police does not possess that authority for the City of Okolona in relation to the claims asserted.

In the present case, the only "policy" alleged in the complaint to have caused the deprivation at issue is that of Police Chief Ivy's failure "to provide procedures to insure medical treatment for prisoners, such failure being willful indifference to Plaintiff's rights to obtain adequate medical treatment." In his response to the motion for summary judgment, however, the plaintiff additionally contends that Ivy's "actions in approving of the

savage treatment of Bishop by his officers" also represent "official policy for the City of Okolona."[4]

As is becoming more and more frequent, the court is faced with a motion to dismiss all claims against a municipality without any differentiation of the federal claims arguably present, coupled with a complaint that lacks the detail desirable from the standpoint of allowing a clear view of the legal theories and/or facts supporting relief against the defendants in their various capacities. That said, while the court will not hazard to guess the particulars of the legal theories the plaintiff will ultimately proffer as support for his claims against the various defendants, the court can conclude that the official capacity claims against Chief Ivy should remain in this lawsuit while those pled against Officers Owens and McCollum must be dismissed.

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[4]Insofar as the respondeat superior is not available under § 1983, assuming without deciding that this allegation represents some variant of a negligent supervision claim, the plaintiff is advised that although Chief of Police Ivy is charged under state law with the duty to control and supervise all police officers employed by the municipality, at a minimum, the plaintiff must be able to show more than a single incident of misconduct to hold the City accountable under this theory of relief. See White v. Taylor, 775 F. Supp. 962, 966 (S.D. Miss. 1990) ("to hold a municipality liable on a theory of inadequate training or supervision, the plaintiff must prove 'at least a pattern of similar incidents in which citizens were injured or endangered by intentional or negligent police conduct and/or that serious misconduct or misbehavior was general or widespread throughout the police force.'") (quoting Rodriguez v. Avita, 871 F.2d 552, 555 (5th Cir. 1989)).

Put in perspective, where a policy is implicated, this court's initial step is to determine which officials "have final policymaking authority under state law concerning the actions at issue." Crowder v. Sinyard, 884 F.2d 804, 830 (5th Cir. 1989). As the plaintiff correctly observes, § 21-21-1, Miss. Code Ann., addresses Chief Ivy's duties with regard to the supervision of subordinate police officers.[5] Evidence submitted to the court on this issue is confined to selected excerpts of Chief Ivy's deposition. His testimony indicates that while the Board of Alderman apparently has a policy manual governing the City's police department (the contents of which the court has no knowledge), the board does not oversee the day to day operations of the force. Moreover, it also appears from his testimony that he in fact promulgates rules and regulations governing his department. Finally, the Chief of Police for the City of Okolona is an elected official rather than one appointed by a higher municipal authority, also indicating that accountability for police procedures ultimately rests with the Chief. Accordingly, the court concludes

[5]Section 21-21-1 of the Mississippi Code Annotated provides in relevant part:

> The marshal or chief of police shall be the chief law enforcement officer of the municipality and shall have control and supervision of all police officers employed by said municipality. The marshal or chief of police shall be the ex officio constable within the boundaries of the municipality, and he shall preform other duties as shall be required of him by proper ordinance.

that there is a sufficient basis for finding that Chief of Police Ivy was the relevant policymaker with final decision making authority as it concerns municipal policy for the conduct of the City's police force.

After the court identifies "those officials who have the power to make official policy on a particular issue," it is the province of the jury to determine "whether their decisions have caused the deprivation of rights at issue." Jett v. Dallas Independent School Dist., 491 U.S. 701, 727,109 S. Ct. 2702, 2723, 105 L. Ed. 2d 598, 628 (1989). That said, although the court finds the plaintiff able to withstand the defendants' motion for summary judgment on the denial of medical treatment claim against the City, as will be discussed infra, the court finds no triable issue on the official capacity claims against officers McCollum and Owens.

The plaintiff alleges in his complaint that Chief Ivy was in charge of the City of Okolona jail. The defendants do not dispute this directly but only urge the court that the plaintiff has failed "to establish that the City of Okolona had a policy of deliberately failing to provide medical treatment to its prisoners." Thus, the issue as to whether or not the chief's failure to provide Bishop medical attention may be chargeable to the City rests upon whether his role as policymaker for the police department extends to the maintenance of the city jail. As noted earlier, the defendants assert that the City has a policy governing how Ivy operates the

police department. Assuming there is such a policy, its relevance is not obvious in the absence of the further contention that those policies also govern the city jail or the municipality's treatment of its prisoners. The plaintiff has charged the Chief of Police with that responsibility. In the absence of any proof tending to negate that contention, summary judgment is not proper on the plaintiff's federal claim for inadequate medical treatment against the City of Okolona.

Summary judgment is, however, appropriate on the plaintiff's official capacity claims against McCollum and Owens, neither of whom are capable of formulating policy for the City but, rather, simply subordinate employees of the department. See Rodriguez v. Avita, 871 F.2d 552, 554 (5th Cir. 1989) ("Where the city is sought to be held liable on the basis of actions by low-level employees... these must be shown to have been carried out in obedience to overall municipal policy or custom"), cert. denied, 493 U.S. 854, 110 S.Ct. 156, 107 L. Ed. 2d 114 (1989). No de facto policy of excessive force having been alleged, summary judgment is proper as to these claims.

An order in conformance with this memorandum opinion will issue.

THIS, the _____ day of September, 1994.

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NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE